



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/06087/2017

THE IMMIGRATION ACTS

**Heard at The Royal Courts of Justice
On 2nd October 2017**

**Decision & Reasons
Promulgated
On 11th October 2017**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

MR W Q
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms O Wybraniec instructed by Duncan Lewis & Co Solicitors

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals against the decision of First-tier Tribunal Judge Chamberlain dated 31st July 2017 who dismissed, on all grounds, the appellant's asylum, humanitarian protection and European human rights Articles 2, 3 and 8 appeal. The appellant asserted the following grounds in the application for permission to appeal.

Ground (i)

2. The Immigration Judge misdirected herself when considering the medical evidence and when finding there was no reference to the reason for assault. The judge erred in considering that the author of the report was required to comment on the reason for the assault as that would be beyond his expertise. Had the author of the medical records commented on the reason that would have been a reason for challenge. Similarly the Rule 35 report and Dr Jegede's medicolegal report could not have been expected to comment on the fact that the appellant was assaulted because he was a supporter of the Jamaat-e-Islami Party and was not instructed to do so.

Ground (ii)

3. The Immigration Judge misdirected herself when considering the medical evidence in relation to the definition of torture. **EO and Others [2013] EWHC 1236 Admin** set out the definition of torture as

"Any act by which severe pain or suffering, whether physical or material, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person, has committed, or intimidating or coercing him or a third person, for any reasons based on discrimination of any kind".

4. The judge erred in paragraph 43 in diluting the findings of Dr Jegede and the author of the Rule 35 report that the appellant was tortured by making a finding that he was attacked once. The appellant was not required to state that he was tortured. All he was required to do was to give an account of the act by which severe pain or suffering was inflicted upon him.
5. The judge erred in finding at paragraph 44 that

"there was a reasonable likelihood that the appellant was assaulted in some way ... however, there is no evidence to link this with the appellant's claimed support of any political party".

Ground (iii)

6. The Immigration Judge erred in finding that it was significant and damaging that the appellant provided more evidence in his witness statement than at interview. The appellant was entitled to provide more detail about his knowledge and understanding of the policies and values of the Jamaat-e-Islami Party in his witness statement than he did at interview. The judge would appear to be raising the standard of burden of proof by finding that giving much more detail after an interview significantly damages a claim.

Background

7. The appellant is a Pakistan citizen, born in 1991 and asserts he was a supporter of the political party Jamaat-e-Islami. He states that on 14th

April 2010 he was attacked by members of the Pakistan Muslim League and hospitalised. His attackers then filed a First Information Report charging him with assault. After his release from hospital he went to stay with his uncle. He then left Pakistan and entered the UK on a student visa on 17th February 2011. His Tier 4 leave was extended until 19th June 2013 but a further application was rejected on 17th February 2014 and his appeal dismissed on 17th October 2014. He became appeal rights exhausted on 9th January 2015.

8. On 5th August 2015 he was fingerprinted in Ireland where he claimed asylum. He was served with an enforcement notice but failed to report. On 16th April 2017 he was encountered after being arrested for a road traffic offence and detained and he claimed asylum on 24th April 2017. His claim was rejected.
9. At the hearing Ms Wybraniec before me provided a very helpful skeleton argument for the hearing which outlined the issues I have stated above and she submitted that paragraph 339K should have been engaged and the appellant was entitled to the presumption of the serious indication of a well-founded fear of persecution. On the medical evidence it was open to the judge to find that the appellant was a victim of torture.
10. The first ground was such that neither of the definitions of torture required consideration of the reason for the infliction of pain and in introducing this consideration in relation to the medical evidence the judge misdirected herself as to the relevant legal test. There was no reason for the writer of the medical notes to have addressed the question of whether the assault constituted torture, let alone for the reason for the assault having taken place. It was unreasonable for the judge to have relied on the absence of such reference in her reasons for conclusions. Such a misdirection was crucial to the judge's subsequent determination at paragraph 44 which found only that the appellant was assaulted in some way. It was correct that the evidence did not link the appellant to the political party but that was not the purpose of the medical evidence. There were two instances of expert medical documentary evidence and it was open to her to have found that the appellant was a victim of torture.
11. Mr Tufan relied on **JL (medical reports credibility) China [2013]**. He referred to the circumstances as they were noted in the determination as a whole. The appellant had been appeal rights exhausted and claimed asylum after being encountered following a traffic incident. The Rule 35 report went a little way towards assisting him and certainly **BA (Eritrea) [2016] EWCA Civ 458** at paragraph 75 confirmed that restatement in a Rule 35 report did not constitute independent evidence of torture. He also pointed out that the medicolegal expert report failed to comply with the guidance given in **JL China** and there was one word in relation to the Istanbul Protocol.
12. I address ground (ii) first because it sets the context for the findings made by the judge in respect of the medical evidence. I stress, this appeal was not a challenge on the basis of **Mibanga [2005] EWCA Civ**

367 and indeed the judge assessed the medical evidence in the context of the account of the appellant as a whole.

13. The judge found at paragraph 26 that the appellant's evidence was inconsistent and he was evasive in cross-examination. He failed further to furnish information in his witness statement regarding bail in an effort to embellish his claim, see paragraph 27. It was open to the judge to find that to leave Pakistan on bail was an issue which was significant and it was no answer from the appellant merely to state that he had not been asked this question.
14. The judge assessed the evidence of Mr Z and found it to contradict the appellant's claim in respect of his membership of the Jamaat-e-Islami. The judge further found at paragraph 35 that the fact that the evidence of the appellant's father and uncle did not refer to the appellant being a supporter of Jamaat-e-Islami.
15. Further, the particular criticism by the judge of the appellant's evidence in this is that he sets out more information about the party and his knowledge of the Jamaat-e-Islami and sets out information which is of a *general nature* and is in the public domain, however when he was asked spontaneous questions at interview he did not know other current senior members apart from one. He was unable to name any current economic policies. The fact that in his witness statement he has given much more detail was found to damage, rather than assist his claim. The conclusions were open to the judge to make, particularly in the light of his limited knowledge of the party when interviewed despite the fact that he had the opportunity to make representations immediately after the interview and in the light of the overall findings which ran from paragraphs 25 to 53. Indeed the judge also noted that 'the appellant had 'not said in his witness statement that any of the men who assaulted him said that they had done so because of his support for Jammat-e-Islami'.
16. With reference to ground (i) the medical evidence must be assessed holistically but in no particular order. It is clear that the head note of **JL (medical reports credibility) China [2013] UKUT 145**, stresses the importance of being vigilant that an objective analysis is required and Dr Jegede appears to have concluded that the appellant underwent torture - that is for the judge to decide. As set out at head note 2 and 3
 - (2) *They should also bear in mind that when an advocate wishes to rely on their medical report to support the credibility of an appellant's account, they will be expected to identify what about it affords support to what the appellant has said and which is not dependent on what the appellant has said to the doctor (HE (DRC, credibility and psychiatric reports) Democratic Republic of Congo [2004] UKAIT 000321). The more a diagnosis is dependent on assuming that the account given by the appellant was to be believed, the less likely it is that significant weight will be attached to it (HH (Ethiopia) [2007] EWCA Civ 306 [23]).*

(3) *The authors of such medical reports also need to understand that what is expected of them is a critical and objective analysis of the injuries and/or symptoms displayed. They need to be vigilant that ultimately whether an appellant's account of the underlying events is or is not credible and plausible is a question of legal appraisal and a matter for the tribunal judge, not the expert doctors (IY [47]; see also HH (Ethiopia) [2007] EWCA Civ 306 [17]-[18]).*

17. I recite this evidence because it was against this background that the appellant claimed that there had been an assault on him. Once again he set out more detail about the assault in his statement and indeed the appellant's own evidence did not support his claim he was assaulted due to his support if any of the Jamaat-e-Islami and indeed the appellant's uncle made no reference to any physical attack on him and no reference to him being a supporter of the party. Having reviewed this evidence and against this background it was that the judge assessed the medical evidence. The judge did not doubt that there had been some scarring but noted that the medical records did not assist the appellant to show that he was assaulted due to his support for a particular party and it is this link and this issue which is important in assessing whether the appellant has indeed been the victim of persecution or serious harm as a result of his links to a party or imputed political opinion.

18. It was open to the judge to dismiss the Rule 35 report as she did because the report merely states "*on examination he has scars **possibly** due to the history given*". As **BA (Eritrea)** identifies a mere restatement of the appellant's account does not assist and the judge was entitled to approach the report as she did particularly as the report used the language 'possibly'.

19. The judge specifically addressed the medical report from Dr Jegede. Once again the judge appears to accept the injuries that the appellant has sustained but the judge questions the reasons for the assault. The judge states at 42

42. *I have also considered the medical report from Dr. Jegede (A11 of the Appellant's bundle). Dr. Jegede's opinion is that the Appellant falls into the category of being a victim of torture. However, this report does not assist the Appellant in showing that the **reason** that he was assaulted was because he was a supporter of the Jamaat-e-Islami party. At page A14 it states that the Appellant stated that he believed the reason he was beaten up was due to his support of the party, but it is only the Appellant's opinion, and no other evidence, including evidence from the Appellant's family in Pakistan, has corroborated the Appellant's view that this is the reason that he was assaulted. Indeed, the evidence from the Appellant's father and uncle refers at the most to a quarrel and threats, not to any physical assault.*

43. *Further, I find the Appellant himself has never claimed that he was "tortured". He has claimed that he was attacked once. That is the*

extent of the Appellant's claim as to the physical mistreatment that he received.

44. *I find that there is a reasonable likelihood that the Appellant was assaulted in some way as shown by the medical report from Pakistan and the medical report from Dr. Jegede. However, there is no evidence to link this with the Appellant's claimed support of any political party. I have found above that he has not shown that he was a supporter of Jamaat-e-Islami. I find that his claim that the assault was politically motivated is an attempt to found an asylum claim.*

20. The judge clearly states that there was no other evidence but this is not a request necessarily for corroboration but for an understanding of why it was that the appellant's father and uncle referred "at most to a quarrel and threats, not to any physical assault". The evidence of the appellant's family contradicted the appellant's latest claims regarding the attack.

21. There is one reference, when describing the injuries, in the medical report at page 5, which complies with the Istanbul Protocol to the effect that

"Nasal septum deviation: there is a marked deviation of the nasal septum about 1.5 centimetre from the midline to the left. This injury is consistent with the application of force with sufficient energy to push the bone and cartilage that makes up the nose to that degree".

22. There is further reference to the scar of a cut 1.5 centimetres in length in the region of the "temporomandibular joint" and the doctor opines that "it could possibly have been caused by a weapon such as a knuckleduster especially if the edges were relatively sharp as is the case of the designs of the said implement".

23. Finally the doctor states

"The scars that I examined did not appear to be surgical in origin although the appearance over time might have been modulated by the surgical technique or other factors pre- or postoperatively e.g. infection, failure to clean the room prior to surgery".

24. The most that can be said about this report is that it confirms that the appellant at some point had experienced a physical injury to the nose but even the doctor does not appear to be clear whether that was due to surgery or otherwise.

25. Nonetheless the judge finds that there was "a reasonable likelihood that the appellant was assaulted in some way as shown by the medical report from Pakistan and the medical report from Dr Jegede", but the judge did not accept that there was evidence to link this with the appellant's claimed support of the political party and as the judge, on the overall evidence, did not accept that he had shown that he was a supporter of the party, she did not accept that the assault had occasioned from his political activities; that was open to the judge. As set out in EO one occasion of

assault could be classified as torture and the judge may have erred legally in her assessment at [43] but for the sound reasons given in the remaining assessment of the medical evidence this is not material. Essentially much of the evidence contradicted the account the appellant had given for his assault and hence the concentration given by the judge to this factor.

26. The judge further proceeded to assess the appellant's account after he had moved to Rawalpindi and found once again that his account was inconsistent and did not accept that the appellant's father would be able to return to his village nor that the appellant's family would be able to live in safety only 40 miles away.
27. It is a matter for the judge to conclude as to whether the appellant's account is credible and I am not persuaded that the judge approached the medical evidence erroneously, bearing in mind the very detailed findings on credibility that were made throughout the determination, the tentative statement made in the Rule 35 report and the conclusion of Dr Jegede that the appellant was "tortured". That suggests an assessment of credibility which is not open to the doctor to make.
28. The doctor made a statement of truth but made no effective reference to the Istanbul Protocol within his report but merely extensively records the appellant's account. As such the report, although it needed to be addressed as indeed it was by the judge, was barely compliant with **JL (medical reports-credibility) China** [2013] UKUT 00145.
29. In the light of the findings overall in the decision there is no error of law by the judge in her approach to the medical evidence or in her approach to the evidence as a whole. That she made the comment that there was no reference in the medical evidence to a reason for the assault should be taken in the light of the findings as a whole.
30. That Rule 339K might have been engaged and as such the appellant would be regarded as someone who had been subject to serious harm such that it might be a serious indication of real risk of harm does not assist. Rule 339K for valid reasons was not engaged.
31. In respect of ground (iii) the judge gave a host of reasons for rejecting the account given by the appellant and explained her rejection of his more detailed written statement over his asylum interview when observing that his spontaneous responses demonstrated that his grasp of the party's policies was tenuous. It was entirely open to the judge to make that finding.
32. I find there is no material error of law and the decision shall stand.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant

and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Helen Rimington

Date Signed 10th October 2017

Upper Tribunal Judge Rimington